

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
THE HOLMES GROUP, INC.,	)	
	)	
Plaintiff,	)	CA No. 05-CV-11367-WGY
	)	(Alexander, M.J.)
v.	)	
	)	
WEST BEND HOUSEWARES, LLC and	)	
FOCUS PRODUCTS GROUP, LLC	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT OF NONINFRINGEMENT**

Plaintiff The Holmes Group, LLC (“Holmes”) accuses defendants West Bend Housewares, LLC, and Focus Products Group, LLC (collectively referred to as “West Bend” for purposes of this motion) of infringing Holmes’ U.S. Patent Nos. 6,573,483 (“the ‘483 patent”) and 6,740,855 (“the ‘855 patent”), both entitled “Programmable Slow Cooker Appliance.” The ‘855 patent is a continuation of the ‘483 patent.

Pursuant to Rules 56(a) and (b) of the Federal Rules of Civil Procedure, West Bend moves for summary judgment that its accused cooker does not infringe the patents-in-suit. Given the lack of complexity of the asserted patent claims, and the lack of ambiguity in the patents themselves and their prosecution histories, the Court can interpret the claims as a matter of law without the need to resort to extrinsic evidence. Because Holmes only asserts literal infringement and the relevant structure of West Bend’s cooker is straightforward, the question of infringement collapses into one of claim construction that is amenable to summary judgment.

The asserted claims for both patents-in-suit require a programmable controller mounted to or positioned within a housing mounted *outside* the cooker's heating unit. Holmes disclaimed any claim scope covering a cooker like West Bend's accused cooker where the programmable controller is mounted to and positioned within a housing that is mounted and located entirely *inside* the heating unit. As a matter of law, there is no infringement.

The grounds supporting this summary judgment motion are more fully set forth in the following documents: (1) Defendants' statement of material facts as to which there are no genuine issues of dispute; (2) Defendants' memorandum in support of the motion; (3) declaration testimony of West Bend's expert, Dr. Barry Feinberg, describing the West Bend cooker; and (4) other supporting exhibits, including pertinent excerpts from the prosecution histories of the patents-in-suit.

For the foregoing reasons, and those set forth in the accompanying documents submitted in support of this motion, West Bend respectfully requests the Court to (1) enter summary judgment against Holmes and in favor of West Bend on Holmes' complaint and West Bend's counterclaims seeking a declaration of noninfringement that West Bend does not infringe claims 13, 14, 17 and 19 of the '483 patent or claims 20, 24, 26, 27 and 29 of the '855 patent; and (2) dismiss Holmes' complaint with prejudice.

**LOCAL RULE 7.1 CERTIFICATE**

The undersigned certify that, on July 18, 2006, counsel for the parties conferred by telephone in a good faith attempt to resolve or narrow the issues presented in this motion but were unable to reach agreement.

Dated: July 19, 2006

Respectfully submitted,

WEST BEND HOUSEWARES, LLC  
FOCUS PRODUCTS GROUP, LLC

*By their attorneys,*

/s/ Erik P. Belt

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**CERTIFICATE OF SERVICE**

I certify that, on July 19, 2006, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Erik P. Belt

Erik Paul Belt